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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-83

LIEUTENANT JOHN A. STRAIT,

Petitioner,

—v.—

HONORABLE MELVIN R. LAIRD, Secretary of Defense; HONORABLE STANLEY R. RESOR, Secretary of the Army; LIEUTENANT GENERAL STANLEY LARSON, Commanding General, Sixth United States Army; MAJOR GENERAL PHILIP B. DAVIDSON, JR., Commanding General, Fort Ord, California; COLONEL JOHN H. HOFFMAN, Commanding Officer, United States Army Reserve Components Personnel Center, Fort Benjamin Harrison, Indiana,

Respondents.

BRIEF OF THE CENTRAL COMMITTEE FOR CONSCIENTIOUS OBJECTORS AND RESERVISTS COMMITTEE TO STOP THE WAR, *AMICI CURIAE*

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Interest of *Amici**

The Central Committee for Conscientious Objectors is a nationwide, non-partisan organization, founded in 1948, dedicated to the protection of the rights of individuals

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* Letters of consent from the petitioner and the respondent to the filing of this brief pursuant to Rule 42(2) have been filed with the Clerk of the Court

charged with the obligation of satisfying the manpower needs of the armed forces. It has provided educational aids to lawyers and lay advisors to persons subject to the draft, as well as counselling and legal assistance to young men with military or draft problems, especially those who have raised conscientious objections to active military service.

The Reservists Committee to Stop the War is a national organization of military reservists and National Guardsmen particularly concerned with furthering the rights and interests of members of the armed services through counselling, representation and litigation. The Committee was the successful plaintiff in *Reservists Committee to Stop the War* v. *Laird*, 323 F. Supp. 833 (D.C.D.C. 1971), which held that members of Congress are ineligible to hold a commission in the Armed Forces Reserve during their continuance in office.

In their efforts to provide assistance to men in the military, both the Central Committee for Conscientious Objectors and the Reservists Committee to Stop the War have a common and substantial concern that all legal remedies, such as the writ of habeas corpus, remain available to vindicate the just claims of servicemen. The accessibility of the courts for the assertion of rights will be seriously restricted for an enormous class of military personnel if the conclusions reached in *Schlanger* v. *Seamans*, 401 U.S. 487 (1971), are extended to the class of litigants represented by Lieutenant Strait. Such a result would work severe financial hardship upon many prospective litigants and, in view of the general increase in the number of military claims raised by way of habeas corpus, would produce a serious concentration of such petitions in the District Court for the Eastern District of Missouri.

The *amici* submit that factual differences between the *Schlanger* and *Strait* cases justify a result in this case which will enable unattached military personnel in an inactive status to continue to have access to more than one federal court.

Argument*

In *Schlanger* v. *Seamans, supra,* this Court considered the situation of an active-duty serviceman with a regular duty station located in a jurisdiction distant from the one in which he brought his habeas corpus petition. Schlanger was on temporary assignment in Arizona, while his commanding officer resided in Georgia. The Court found that, on the facts presented, there was no proper respondent within the jurisdiction of the district court and thus that the court lacked jurisdiction to consider the petition.

The question specifically left undecided in *Schlanger,* and presented here, is whether an unattached military reservist in an inactive status is subject to the presence of his "commanding officer" in the jurisdiction in which he resides and has brought his petition.

The result of extending the *Schlanger* rule to unattached reservists in an inactive status would be to concentrate a potentially enormous number of habeas corpus petitions brought by that class of litigants in a single court, in the Eastern District of Missouri. As one Court of Appeals has held, the government has no substantial interest in so pyramiding a mountain of habeas petitions, *Arlen* v. *Laird,*

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* All factual material contained herein is based on official, publicly-available printed materials provided to counsel for *amici* by the Department of the Army, Office of the Adjutant General, Washington, D.C., and the United States Army Reserve Components Personnel and Administration Center, St. Louis, Missouri.

—— F.2d —— (Slip Op. 223) (2d Cir. October 28, 1971); and the interests of prospective litigants and the courts themselves clearly require a different result.

The United States Army Reserve Components Personnel and Administration Center ("RCPAC"), located in St. Louis, Missouri, is currently responsible for maintaining the records and files of all Army reservists.* Similar record-keeping centers for inactive reserve personnel are maintained by other branches of the Armed Services.**

RCPAC was established in 1919 in Washington, D.C., primarily for maintaining records relating to military personnel who served in the Mexican border conflict. Since its establishment, RCPAC has been relocated from time to time. In 1942 it was located in High Point, North Carolina, and it was moved to St. Louis in 1945 and to its current location there in 1955. During this period, RCPAC maintained records relating primarily to persons who had served in the various wars.

In 1962, RCPAC assumed the responsibility for administering the records of the Standby and Retired Reserves. In 1965, with the discontinuance of the administrative responsibilities of the 14 U.S. Army Corps and the Alaskan and Southern Commands, RCPAC additionally assumed the administration of the records of the Non-Unit Ready Reserve. Commencing in March of 1971, the final step in a sweeping consolidation of the Army's reserve record-keeping system at RCPAC was completed with the authorization

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* At the time Lieutenant Strait brought his petition, the records for ROTC officers on a delayed service status were maintained at the U.S. Army Reserve Components Personnel Center at Fort Benjamin Harrison, Indiana. As is discussed *infra*, this is no longer the case.

** The Navy's record-keeping center is located in Bainbridge, Maryland, and the Air Force's, in Denver, Colorado.

to merge with it the center located at Fort Benjamin Harrison, Indiana, which had performed similar functions for various components of the Army Reserve. This consolidation now has been effected.

Throughout this period of time, RCPAC gradually has phased out its former record-keeping functions with respect to individuals with a former but no present military affiliation, transferring these to other branches of the government.*

As a consequence of this process of consolidation of unattached inactive status reservists and transfer of non-military functions to other centers, RCPAC now has record keeping and nominal administrative responsibility for *approximately 2,000,000 servicemen,* including all Army personnel not on active duty and not attached to a specific reserve unit. Of this number, approximately 1,000,000 are members of the Individual Ready Reserve, 400,000 are members of the Standby Reserve and 300,000 are members of the Retired Reserve.**

Each of these 2,000,000 persons is an unattached, inactive reservist, in the same position with respect to the armed services as Lieutenant Strait. The vast majority of these individuals have had no direct contact with the Army during the period for which they have been assigned to RCPAC other than at their residences scattered throughout the nation. An extension of the *Schlanger* rule under these circumstances would suddenly thrust upon the District Court for the Eastern District of Missouri the prospect of

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* At the present time, the National Personnel Record Center, an agency of the General Services Administration which is also situated in St. Louis, maintains (with certain exceptions) the records of all former Army, Air Force, Marine Corps, Navy and Coast Guard personnel who no longer have a military status or are deceased.

** These figures do not reflect the increased numbers brought about by the most recent merger with the Indiana center.

a very significant mushrooming of its caseload, without any compensating considerations in favor of such a concentration.

Under Army procedures, all dealings with these individuals customarily are conducted only by mail or by representatives of the Army in the localities in which each of these individuals resides. In cases such as Lieutenant Strait's, fact-finding missions are conducted in the area of the serviceman's residence. In most cases, therefore, the hearing officer of the Army is assigned from and himself resides in the district in which the petitioner raises his claims. Only the barest record of essential facts is kept and considered at RCPAC.

This process of centralization of record-keeping and administrative functions by the Army does not justify a massive dislocation of judicial economies or drain upon litigants' financial resources, nor any restriction upon citizens' access to local federal courts.

The purposes for which RCPAC was organized do not suggest a different conclusion. The Center was developed to provide centralization of administrative controls and greater efficiency in record-keeping and administrative procedures; and it was also intended to improve the Army's capability to mobilize, if needed, the individual, unattached reservist. None of these activities involve anything resembling day-to-day orders given by a commanding officer to a serviceman, of the type to which Schlanger was subject in Georgia but not in Arizona. RCPAC exists primarily to maintain continental mobilization capabilities.

The contacts between literally millions of servicemen and a record-keeping computer at RCPAC are too slender to require that all petitions such as the one involved in this case be brought in the Eastern District of Missouri only.

CONCLUSION

For the reasons set forth above, *amici curiae* respectfully urge the Court to grant the relief requested by the petitioner, reversing the judgment of the Court of Appeals and remanding with instructions to reinstate the judgment and opinion of February 17, 1971.

Respectfully submitted,

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